THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION NO.13951 OF 2006

DATED: 21st SEPTEMBER, 2006.

Between :

1. Mummidi Ganesh and another. .. Petitioners

And

1. The Commissioner of Prohibition & Excise, Andhra Pradesh, Hyderabad,
And 2 others. … Respondents

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ORDER :

The petitioners claim to be the owners of the premises bearing Door No.20-1-2A, Main Road, Kakinada, E.G. District.

It is not in dispute that the said premises was leased out to the 3rd respondent herein during the lifetime of the father of the petitioners. It is stated that the suit for partition being O.S.No.512 of 1993 on the file of the Court of the II-Addl. Senior Civil Judge, Kakinada is pending between co-owners and that the lease agreement entered into by the father of the petitioners with the 3rd respondent stood lapsed on the death of the father of the petitioners. Though the fact that the 3rd respondent has been running a bar and restaurant in the premises in question for the past 20 years is not disputed, the petitioners claimed that for the year 2006-07 they raised a specific objection for renewal/grant of licence on the ground that the suit for partition is pending. However, in spite of the objections raised by them, the respondents 1 and 2 have granted licence in favour of the 3rd respondent for the year 2006-07 which is contrary to Rule 6 (1) (vi) of Andhra Pradesh Excise (Grant of License of Selling by Bar and Conditions of Licence) Rules, 2005 made under G.O.Ms.No.997, dated 24-5-2005.

Though no counter-affidavit is filed, the learned Government Pleader for Prohibition & Excise, under instructions, stated that the 1st respondent – Licensing Authority did not receive any complaint with

regard to the premises in question and therefore the licence was renewed in favour of the 3rd respondent in respect of the premises wherein he has been running a bar and restaurant for the past several years.

The 3rd respondent filed a counter-affidavit denying all the allegations made by the petitioners and stating that even after the death of the father of the petitioners there was an agreement among the petitioners and other brothers that the 3rd respondent should be allowed to carry on the business in the premises in question. Thus, it is contended that the allegation that there is no valid lease in respect of the premises in question is incorrect.

Under Rule 6 (1) (vi) of the Andhra Pradesh Excise (Grant of License of Selling by Bar and Conditions of Licence) Rules, 2005 made under G.O.Ms.No.997, dated 24-5-2005 a licence in Form-2B shall not be granted unless the applicant produces the lease deed on a stamp paper of the proposed licensed premises from the owner of the premises.

In the case on hand, from the material placed before this Court, it appears that the 1st respondent has not made any such enquiry, particularly whether the lease in favour of 3rd respondent is subsisting.

Having regard to the rival claims made by the petitioners and the 3rd respondent with regard to the subsistence of valid lease in respect of the premises in question, I deem it appropriate to dispose of the writ petition with a direction to the 1st respondent to make a detailed enquiry with regard to the compliance of Rule 6 (1) (vi) of the Andhra Pradesh Excise (Grant of License of Selling by Bar and Conditions of Licence) Rules, 2005 and to pass appropriate orders in accordance with law after hearing both the petitioners and the 3rd respondent. Both the parties are granted liberty to produce before the 1st respondent the necessary material in support of their respective claims within two weeks from today. The 1st respondent shall consider the

same and pass appropriate orders in accordance with law within a period of eight (8) weeks thereafter.

Writ Petition is accordingly disposed of. No costs.

G. ROHINI, J.

Dt. 22-9-2006
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